

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-12667-GAO

ALEXANDER RAMOS JIMENEZ,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

ORDER
August 3, 2005

O'TOOLE, D.J.

The petitioner's motion to vacate his sentence pursuant to 28 U.S.C. § 2255 is DENIED.

In the petition, Alexander Ramos Jimenez presents two issues concerning the sentence I imposed in September 2003 after he pled guilty to certain drug offenses. First, he argues that he received ineffective assistance of counsel at sentencing because his attorney failed to adequately advocate for a four level reduction in the sentencing guidelines calculation under § 3B1.2 based on his putative minimal role in the offense. That argument is wholly without merit. Prior to sentencing Jimenez's attorney filed a sentencing memorandum in which she specifically argued that the defendant was merely a "mule" and should receive the benefit of the four level reduction for his minimal role. See United States v. Jiminez, Criminal Action No. 03-10070-GAO, Dkt. No. 17. Consequently, Jimenez's claim of constitutionally infirm assistance is contradicted by the record.

Second, Jimenez argues that I erred in denying the requested reduction. That issue is waived because he did not appeal his sentence, and it is not properly before me on the present § 2255 petition.

Accordingly, Jimenez's motion to vacate the sentence is denied, and judgment shall enter in favor of the respondent and against the petitioner.

It is SO ORDERED.

August 3, 2005
DATE

\s\ George A. O'Toole, Jr.
DISTRICT JUDGE